

**APPROVED MINUTES
YORK COUNTY PLANNING COMMISSION**

Regular Meeting
York Hall, 301 Main Street
June 9, 2004

MEMBERS

Nicholas F. Barba
John R. Davis
Frederick W. Harvell
Alexander T. Hamilton
Robert D. Heavner
Alfred E. Ptaszniak, Jr.
Andrew A. Simasek

CALL TO ORDER

Chair Andrew Simasek called the regular meeting to order at 7:00 p.m.

ROLL CALL

The roll was called and all members were present except Mr. Davis. Staff members present were J. Mark Carter, James E. Barnett, Jr., Timothy C. Cross, Amy Parker, and Earl Anderson.

APPROVAL OF MINUTES

Mr. Heavner moved the adoption of the revised minutes of the regular meeting of May 12, 2004. By roll call vote, they were adopted unanimously.

REMARKS

Chair remarked that the Code of Virginia requires local governments to have a Planning Commission, the purpose of which is to advise the Board of Supervisors on land use and planning issues affecting the County. The responsibility is exercised through recommendations conveyed by resolutions or other official means and all are matters of public record. He indicated that the Commission is comprised of citizen volunteers, appointed by the Board, representing each voting district and two at-large members.

CITIZEN COMMENTS

There were no citizen comments.

PUBLIC HEARINGS

Application ZM-85-04, 64 Enterprises, LLP: Request to amend the York County Zoning Map by reclassifying two parcels encompassing approximately 15.0 acres of land located on the north side of Newman Road (Route 646) at its intersection with Fenton Mill Road (Route 602) to conditional GB (General Business) subject to voluntarily proffered conditions. The 5.0-acre parcel adjacent to Fenton Mill Road is

zoned GB (General Business) and the 10.0-acre parcel to the east is zoned RR (Rural Residential). The applicant has proffered to prohibit various uses on the property, establish architectural guidelines to be enforced by a property owners association, and limit building size and height and site lighting. Other proffers address design details such as landscaping, street trees, pedestrian connections, monument signage, and entrance improvements. The Comprehensive Plan designates the area immediately surrounding the east side of the I-64 Lightfoot interchange as a General Business node. The surrounding area is designated for Low Density Residential development. The property is further identified as Assessor's Parcel Nos. 2-9A and 29B.

Timothy Cross, AICP, Principal Planner, summarized the staff report to the Commission dated June 1, 2004, in which the staff recommended approval. The applicant proffers that the development would require County review and approval of building elevations and architectural details, Mr. Cross added, noting those are not typical requirements with site plan submission. He displayed for the members a conceptual plan and pointed out it is not proffered, however, so the development could look different than depicted on the conceptual plan. Mr. Cross emphasized that the proffers would apply to any future owner or developer of the property.

Mr. Hamilton asked if public water and sewer are available to the site; **Mr. Cross** said they are. **Mr. Hamilton** then asked if the traffic study took into account the planned subdivision, The Oaks at Fenton Mill, and **Mr. Cross** said it did because the staff specifically requested that it be.

Mr. Heavner asked if a 15,000 square foot area, as proposed, could result in a three-story facility totaling 45,000 square feet of space, and **Mr. Cross** said that it could.

Mr. Heavner asked why nine monument signs would be permitted if the applicant had not proffered to limit the number to five, and **Mr. Cross** explained that after rezoning to GB there would be sufficient frontage on Newman Road to subdivide into nine separate parcels and each parcel would be permitted its own freestanding sign.

Mr. Simasek noted the Comprehensive Plan calls for the development to serve the community, not attract tourists. According to the traffic studies, however, 90 percent of traffic would be expected to come from the west and not from the existing community. **Mr. Cross** replied that was correct, based on the applicant's traffic study, which was in turn based on traffic origins and destinations and comparative traffic volumes on Interstate 64 and Route 199 versus Newman Road.

Mr. Simasek inquired how much frontage would be on Newman Road, and **Mr. Cross** said 560 square feet of the development could face Newman Road. **Mr. Simasek** then inquired as to the alignment of the previously mentioned monument signs. **Mr. Cross** explained the alignment would be based on several criteria including sight distance and orientation. He added they could be lighted signs.

Chair Simasek opened the public hearing.

Vernon Geddy III, Esq., Geddy, Harris, Franck and Hickman, Williamsburg, spoke in behalf of the applicant. Mr. Geddy introduced Messrs. Jeff Williams, Managing Partner, 64 Enterprises LLP, and

Tom Tingle, Guernsey Tingle Architects. They share his agreement with the staff analysis, he reported.

Mr. Geddy elaborated on the layout and plans for the proposed center and emphasized it is intended to address retail and service needs of the surrounding community, not the regional or tourist market. He said it would not be a typical strip center and types of businesses would be limited. Mr. Geddy added that it is very unusual to have architectural guidelines enforceable by the County, as proffered in this case.

Mr. Geddy noted the applicant held two meetings early in the process for community input, the first to explain the plan and “listen to neighbors,” the second to present draft plans to the community and hear criticisms and concerns. The plan then was developed and submitted along with the application for rezoning. It has since been revised. Mr. Geddy summarized each comment received from the community and the proposed plan to address it. He concluded saying a commercial development does not have to “look commercial” and the proposal is an attractive business development that would have positive fiscal impacts to the County. He recommended approval.

Mr. Heavner asked if a developer has been contracted; **Mr. Geddy** said a developer has not been selected.

Mr. Simasek thanked the public for emails, telephone messages and general interest in the project, and then opened the public hearing.

Mr. Jack Hamilton, 102 Westminster Place, President of Banbury Cross Homeowners Association (HOA), submitted the following resolution of the Banbury Cross Homeowners Association, which he said was signed by all Board members.

RESOLUTION OF THE BANBURY CROSS HOMEOWNERS ASSOCIATION
May 14, 2004.

We, the board of the Banbury Cross Homeowner’s Association, respectfully ask the York County Planning Commission to reject application # ZM 8504 submitted by the 64 Associates, L.L.P. and Fords Colony First Choice Realty, Inc. for the proposed re-zoning of the ten acre parcel on Newman Road near the corner of Fenton Mill Road from rural residential to commercial to be heard by the York County Planning Commission at 7:00 PM on June 9, 2004 at the Old Court House, 301 Main Street, Yorktown.

This proposal is against the County’s own comprehensive plan. It would seriously impair the quality of life, property value and safety of the surrounding neighborhoods where we live. There is already adequate space allocated for commercial development in this area, and there is no compelling need for the re-zoning of residential land in a county with a growing population and seemingly adequate commercial space across I-64 and elsewhere. We urge the York County Planning Commission to reject this proposal, hold to its own Comprehensive Plan, and express its opposition to the over-development of York County east of the I-64/199 intersection.

We believe that it is not in the interest of York County to violate its own comprehensive plan, particularly since this would have such far-reaching negative effects on so many of its citizens. We ask that our voices be heard.

Mr. Jack Hamilton also submitted a petition signed by approximately 217 residents of Banbury Cross, Old Quaker Estates, Skimino Hills, and surrounding areas of York and James City Counties. He noted that, while the Comprehensive Plan intends to serve the needs of the community and the community supports the Comprehensive Plan, the majority of the community opposes the rezoning because it threatens the rural character of the community and could increase traffic threefold or more. Mr. Hamilton then asked those who were opposed to the proposed rezoning to stand. Approximately 80 people stood.

Mr. Peter Mellette, 125 Cherwell Court, spoke in opposition to the application saying it is contrary to state law because it would not improve public welfare or provide healthy surroundings for family life. In his view, it contradicted the intent of the Comprehensive Plan because it was not in keeping with the character of the surrounding neighborhood, would not serve the needs of surrounding neighbors but would serve instead a regional and tourist market; the traffic impact to the generally poor and overstressed roads would be high; and the proposed development would be directly across the street from a fire station without providing any additional traffic signal.

Mr. Andy Petkofsky, 238 Kingsgate Road, displayed maps comparing the proposal to land use goals as stated in the Comprehensive Plan. He recommended denial because the proposed development, he believed, would cause the redefined GB area to extend almost twice the distance as the GB node indicated in the Plan and would be contrary to the economic development priorities as stated in the Comprehensive Plan.

Mr. Dick Bain, 118 Penn Drive, Old Quaker Estates, spoke in opposition to the application. Mr. Bain believed the architectural guidelines are not enforceable and “offer no protection” because they are not proffered and could be revised. He added that the developer controls membership in its architectural review board. Mr. Bain pointed out that two entrances are proffered, while the Zoning Ordinance would recommend only one entrance. He also believed acceleration and deceleration lanes were needed for traffic safety, as well as sidewalks and bicycle lanes, not recommended in the staff report.

Mr. Fred Richmond, 215 Cherwell Court, said he was not opposed to growth or development but the proposal violates the Comprehensive Plan. More housing is needed in the upper county, he believed, and wondered why the County would rezone any of the subject property from residential zoning. Mr. Richmond asked whether the Commission wanted every land speculator to gain benefits or to protect the needs and desires of the community.

Mr. Dan Comber, 121 Penn Drive, was opposed to the application because it violated the Comprehensive Plan and would place a burden of increased traffic, lighting and visual impact upon the residents for the sole benefit of the developer. Mr. Comber said the rezoning could lead to five separate signs along Newman Road into the proposed development. He said the existing ravines on the five acres currently zoned GB were not a good investment, so the developer wants to rezone the existing RR-zoned land to GB to salvage the investment. He said the community does not believe that a “fancy commercial venture should be a reason to impinge upon our property.”

Mr. Matt Slack, 112 Penn Drive, believed the traffic impact of the proposed development would be far greater than the staff estimate. He noted that the traffic interchange at Fenton Mill Road-Route 199 is a

two-lane interchange feeding traffic to Interstate 64 and additional traffic would pose additional hazards. He requested denial.

Mr. Bill Pepper, 130 Londonderry Lane, Banbury Cross, believed the rezoning would change the character of the neighborhood. He also said the lighting proposed for the commercial development would intrude on the Banbury Cross neighborhood, particularly because of some differences in elevation. He expressed concern about increased traffic of approximately 5,000 trips per day on Newman Road. He does not want the County to rezone 10 acres to develop a commercial complex but had no problem with a five-acre commercial development surrounded by residential acreage. Mr. Pepper enjoys the rural atmosphere and said that is the reason he and many of his neighbors selected northern York County.

Mr. Robert Snare, 177 Wichita Lane, opposed the application and felt its approval would benefit only the developers. He requested the County honor the Comprehensive Plan and not rezone the property.

Mr. Augustine Dovi, 149 Quaker Meeting House Road, enjoys the quality of life where he has resided for many years, he said. Mr. Dovi thought commercial enterprises should be separate from the communities and enough commercial development exists on the other side of Interstate 64. He thought the development could threaten wetlands. Mr. Dovi believed approval would subject the community to more negative than positive impacts, and he was opposed.

Mr. Richard Zick moved to the area 17 years ago because it was a rural area. He felt if this application were approved, it would be the beginning of more development. He asked the Commission to vote against it.

Mr. Bill Grass, 298 Barlow Road, reminded the Commission of its responsibility to the balance [between commercial and residential interests] vital to making the community a better place to live. He thought there was only one justifiable reason to rezone as requested: if there was adequate space. Mr. Grass pointed out that the other side of Interstate 64 has plenty of land available for this type of development, but it is not needed where it is proposed. He said the community would pay the price for such a mistake. He requested denial.

Mr. David Schuster, 209 Cherwell Court, agreed with the previous comments. He said when he hears about “generous proffers” he becomes suspicious. He said the applicant is offering architectural guidelines instead of architectural requirements, and the architectural review committee could consist of only two people including the owner. The guidelines could be broadly interpreted with no input from the community. He asked the Commission to reject the proposal.

Ms. Theda Jane Holcomb, 168 Skimino Road, said she has lived in the community since 1972 after having spent a year selecting a home in rural York County. She said the traffic on Newman Road is very heavy and questioned the wisdom of adding more traffic to what already are congested and unsafe conditions. She was opposed.

Mr. Lyle Hughes, 203 Cherwell Court, has lived in his neighborhood for 16 years. There has been resurgence in interest to rezone the subject property for commercial uses during the last three to five years – an executive golf course and a private Christian school among them - and the community

opposed each proposal. He said he keeps hearing that the Comprehensive Plan cannot be changed, but if that is the case, "why are we here?" Mr. Hughes said this particular application explains exactly what the applicant wants to do and appears to him less offensive than some earlier proposals. Therefore, he favored approval.

Ms. Winnie McKinley, 112 Quaker Meeting House Road, said houses will stay in a community and businesses will leave.

Mr. Carl Seibert, 136 Devonshire Drive, predicted that campers from nearby campgrounds would use the proposed commercial facilities and their campers could cause traffic safety hazards as they negotiate the turn into the development.

Mr. Carl Arnett, 136 Londonderry Lane, asked about the status of The Oaks at Fenton Mill and what would happen to the future houses to the rear of the subject property.

Mr. Simasek said The Oaks at Fenton Mill is under review by the County there would be at least 75 feet of buffer between the rear of Oaks and the proposed development.

Mr. James W. Noel, York County Director of Economic Development, said he understood the concerns of the citizens but believed the plan to be well designed and would be a positive addition to the area. If defeated, the application might be restructured and become less desirable. Mr. Noel believed there ultimately would be commercial development on the five-acre parcel under consideration for rezoning and the proposed plan could set a positive tone for any future development.

Ms. Monique Sessler, 113 Nevada Circle, took issue with Mr. Noel's remarks because the residents should not have to accept this proposal just because it may be better than what could follow. She thought the residents should purchase the five-acre parcel and develop it themselves, and suggested it be a neighborhood recreation area. She did not think the proposal was well thought-out and she was opposed to it.

Mr. Kirk Griffin, 110 Indiana Lane, was concerned about traffic hazards associated with a new commercial area. He said many students, including his son, travel Fenton Mill Road to go to Bruton High School. Mr. Griffin wondered if a life is worth risking.

Mr. Brian Deliege, 268 Barlow Road, expressed concern over the "massive loss of habitat" for deer and other wildlife that could result, if approved, and force wildlife into urban areas. He also pointed out that Village A, as proposed, would be permitted to have a gas station and leakage into the ground could be a problem. He was concerned about noise. Mr. Deliege said he represented a younger generation and was opposed to the application.

Mr. Jack Endero, 395 Fenton Mill Road, said when he purchased his three acres it was rural. He said the applicant has indicated to the community that the applicant is free to sell the property "to any taker," who, Mr. Endero said, might then propose something entirely different from the current proposal. Mr. Endero did not think a retail or motel operation at the intersection would serve the community and would cause the community to suffer. He opposed the application.

Mr. Andrew Musmechi, 216 Cherwell Court, did not believe rezoning as proposed complied with the Comprehensive Plan. He suggested a better plan would be to rezone the five-acre parcel to Rural Residential.

In a response to a citizen's question about what uses would be permitted on the property if the application were approved, **Mr. Cross** called to the Commission's attention the list, "General Business (GB) Land Use," attached to the staff memorandum. Mr. Cross then mentioned that Mr. Fred Richmond had indicated during his earlier remarks that 23 homes could be built on the property and Mr. Cross clarified that was true if the property were rezoned to R13, but under the present zoning only eight homes were permitted.

Chair Simasek closed the public hearing.

Mr. Heavner requested clarification of the boundaries and ownership of the parcel that the applicant referred to as "Village A" and **Mr. Cross** explained that portion extends beyond the boundaries of the current GB-zoned five-acre parcel and is owned by 64 Enterprises, LLP. **Mr. Heavner** believed the applicant offers a set of guidelines equal to none in the County and to deny the proposal might bring about even more problems with traffic access and proximity to Fenton Mill Road.

Mr. Ptasznik inquired about the possibility of installing an emergency-vehicle traffic control signal at the entrance to the Skimino Fire Station upon development of the property. **Mr. Cross** said that such a traffic signal could be considered during site plan review, and the decision would be made by the Virginia Department of Transportation following a joint review with the Department of Fire and Life Safety.

Mr. Hamilton asked if a right-turn lane from Newman Road into the development could be installed to accommodate traffic to the proposed development from the campground area. **Mr. Cross** said the projected trip numbers warrant only a right-turn radius but VDOT would make a determination if more were needed, such as a right-turn lane or taper.

Mr. Barba was reminded of the emotion elicited among Yorktown citizens about the future of Nick's Seafood Restaurant. In this case, however, there is a specific plan for the future development. **Mr. Barba** said the Comprehensive Plan is not parcel-specific and the parcels under consideration were always intended for commercial development upon the availability of water and sewer. Mr. Barba thought the application represented a desirable use of the land, and pointed out there are many other, less desirable, permitted uses. He noted that if the developer were to sell the land, the proposed proffers would remain with the property.

Mr. Harvell stated that when he visited the property it appeared to be well suited for General Business classification – even the presently zoned Rural Residential portion. Mr. Harvell thought the plan was custom-made for the property.

Mr. Ptasznik explained the mission of the Comprehensive Plan as a guide that is required by the State of Virginia to be reviewed every five years. After reading an excerpt from the Plan, Mr. Ptasznik observed that the citizens who have spoken want to maintain their present quality of life and at the same time, the County needs to expand the tax base in order to provide adequate services. He explained the

Zoning Ordinance contains the zoning code for the County and the Planning Commission is charged with determining the best use of land. He said the architectural review committee proposed by the applicant appeared to guarantee the development would be as proposed. He expressed disappointment that the Commission was not provided a site plan with the staff report.

Mr. Hamilton said the Commission would make a recommendation based on what it believed to be in the best long-term interests of the community. That the application proposes very specific uses made it more attractive for his support, he said.

Mr. Heavner said if the application is denied, up to 40- or 50-thousand square feet of retail space could be constructed on the property, which could be a less desirable retail mix, attract more traffic, and bring about more vacancies of the retail space. He supported approval.

Mr. Simasek thought the developers were honest and sincere, but agreed there were some problems such as amount of signage, traffic from outside the region, and the emotions of the citizens who do not favor approval. He said the Commission is entrusted with making recommendations based on the best use of land, but he found that difficult when faced with emotions so strong against it. He said the land should be serving the community and Mr. Simasek believed it was right in this case to vote for the citizens.

Mr. Ptasznik moved to approve Resolution P04-12.

PC04-12

On motion of Mr. Ptasznik, which carried 5:1 (Mr. Simasek opposing, Mr. Davis absent, the following resolution was adopted:

A RESOLUTION TO RECOMMEND APPROVAL OF AN APPLICATION TO REZONE APPROXIMATELY 15.0 ACRES ON NEWMAN ROAD AT ITS INTERSECTION WITH FENTON MILL ROAD FROM GENERAL BUSINESS (GB) AND RURAL RESIDENTIAL (RR) TO CONDITIONAL GENERAL BUSINESS SUBJECT TO VOLUNTARILY PROFFERED CONDITIONS

WHEREAS, 64 Enterprises, LLP has submitted Application No. ZM-85-04, which requests to amend the York County Zoning Map by reclassifying approximately 15.0 acres of land located on the north side of Newman Road (Route 646) at its intersection with Fenton Mill Road (Route 602), further identified as Assessor's Parcel Nos. 2-9A and 2-9B, from GB (General Business) and RR (Rural Residential) to conditional GB subject to voluntarily proffered conditions; and

WHEREAS, said application has been forwarded to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on this application; and

WHEREAS, the Commission has carefully considered the public comments with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the 9th day of June, 2004, that Application No. ZM-85-04 be, and it is hereby, transmitted to the York County Board of Supervisors with a recommendation of approval to reclassify approximately 15.0 acres of land located on the north side of Newman Road (Route 646) at its intersection with Fenton Mill Road (Route 602), further identified as Assessor's Parcel Nos. 2-9A and 2-9B, from GB (General Business) and RR (Rural Residential) to conditional GB subject to voluntarily proffered conditions contained in the proffer statement titled "Conditions Voluntarily Proffered For the Reclassification of Property Identified as Tax Parcel 002 9A, GPIN C20B-3184-2547 and Tax Parcel 002 9A, GPIN C20B-3696-2909," dated June 9, 2004, and signed by J. F. Williams III and Sally M. Richardson.

Application No. ZM-86-04, Keener's Auto Parts, Inc: Request to amend the York County Zoning Map by reclassifying an approximately 2.2-acre parcel of land located on the east side of Commonwealth Drive (Route 1839) across from its intersection with Regal Way in the City of Newport News, from IL (Limited Industrial) to GB (General Business). The property, further identified as Assessor's Parcel No. 36-23, is designated for General Business development in the Comprehensive Plan.

Timothy Cross, AICP, Principal Planner, presented a summary of the staff memorandum to the Commission dated May 26, 2004 in which the staff recommended approval. The applicant's agent has indicated that the property would likely be developed as a hotel if rezoned as requested, according to Mr. Cross.

Mr. Heavner inquired about any plan to extend Commonwealth Drive to Bethel Industrial Park and **Mr. Cross** said no such plan exists.

Chair Simasek opened the public hearing.

Mr. Bill Sears, Income Properties, Inc., Newport News, the realtor representing the applicant, **Mrs. Keener**, confirmed that a contract has been signed for a triple-A hotel to occupy the site pending approval of the rezoning. Mr. Sears asked for a recommendation of approval.

Mr. Timothy Whitlow, 329 Commonwealth Drive, indicated he is general manager of Candlewood Suites. While he welcomed development, he noted there are five hotels accessible from two entrances off Victory Boulevard and two more hotels are slated to open in the near future. He was concerned about the ability of the area to sustain yet another hotel and about increased traffic congestion in the area.

Mr. Heavner inquired why a site plan was not submitted with the application. **Mr. Sears** indicated it would be premature to do so before a rezoning of the property was approved.

Allan A. Staley, Esq., Patten, Wornom, Hatten & Diamonstein PLC, Newport News, who represented the prospective purchaser of the subject property, explained that his client would not spend the money on a site plan until the rezoning is approved and completed.

Mr. Simasek acknowledged Mr. Whitlow's concerns but believed "competition is best left to the marketplace."

Mr. Barba moved Resolution PC04-13.

PC04-13

On motion of Mr. Barba, which carried 6:0 (Mr. Davis absent), the following resolution was adopted:

A RESOLUTION TO RECOMMEND APPROVAL OF A REQUEST TO RECLASSIFY APPROXIMATELY 2.2 ACRES ON THE EAST SIDE OF COMMONWEALTH DRIVE (ROUTE 1839) FROM IL (LIMITED INDUSTRIAL) TO GB (GENERAL BUSINESS)

WHEREAS, Keener's Auto Parts, Inc. has submitted Application No. ZM-86-04, which requests to amend the York County Zoning Map by reclassifying a 2.2-acre parcel on the east side of Commonwealth Drive (Route 1839), further identified as Assessor's Parcel No. 36-23, from IL (Limited Industrial) to GB (General Business); and

WHEREAS, said application has been forwarded to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on this application; and

WHEREAS, the Commission has carefully considered the public comments with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the 9th day of June, 2004, that Application No. ZM-86-04 be, and it is hereby, transmitted to the York County Board of Supervisors with a recommendation of approval to amend the York County Zoning Map by reclassifying a 2.2-acre parcel on the east side of Commonwealth Drive (Route 1839), further identified as Assessor's Parcel No. 36-23, from IL (Limited Industrial) to GB (General Business).

Application No. UP-637-04, Stephanie S. Froyen: Request for a Special Use Permit, pursuant to Section 24.1-283(b) of the York County Zoning Ordinance, to authorize a beauty shop as a home occupation within a single-family detached dwelling on a 0.40-acre parcel of land located at 602 Lake Dale Way (Route 1753) and further identified as Assessor's Parcel No. 37-25-9-157. The property is zoned R20 (Medium density single-

family residential) and the Comprehensive Plan designates this area for Medium-Density Residential development.

Mr. Earl Anderson, Planner, summarized the staff report to the Commission dated May 28, 2004, in which the staff recommended approval. Mr. Anderson offered to answer any questions related to this application.

There being no questions of staff, Chair Simasek opened the public hearing.

Mr. Stephanie Froyen, 602 Lake Dale Way, indicated she had nothing to add to the staff report but was available to answer questions.

Hearing no one else, Chair Simasek closed the public hearing.

Mr. Hamilton moved adoption of Resolution PC04-14.

PC04-14

On motion of Mr. Hamilton, which carried 6:0 (Mr. Davis absent), the following resolution was adopted:

A RESOLUTION TO RECOMMEND APPROVAL OF A SPECIAL USE PERMIT TO AUTHORIZE A BEAUTY SHOP AS A HOME OCCUPATION AT 602 LAKE DALE WAY.

WHEREAS, Stephanie S. Froyen has submitted Application No. UP-637-04 requesting a Special Use Permit, pursuant to Section 24.1-283(b) of the York County Zoning Ordinance, to authorize a beauty shop as a home occupation within a single-family detached dwelling on a 0.40-acre parcel of land located at 602 Lake Dale Way (Route 1753) and further identified as Assessor's Parcel No. 37-(25)-9-157; and

WHEREAS, said application has been referred to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on this application; and

WHEREAS, the Commission has given careful consideration to the public comments and staff recommendation with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the 9th day of June, 2004, that it does hereby transmit Application No. UP-637-04 to the York County Board of Supervisors with a recommendation of approval, subject to the following conditions:

1. This use permit shall authorize the establishment of a one (1)-chair beauty shop as a home occupation within a single-family detached dwelling on a 0.40-acre parcel of land located at 602 Lake Dale Way and further identified as Assessor's Parcel No. 37-(25)-9-157.
2. The conduct of such home occupation shall be limited to approximately 63 square feet, which is shown on the house sketch plan filed with the application.
3. The home occupation shall be conducted in accordance with the provisions of Sections 24.1-281 and 24.1-283(b) of the York County Zoning Ordinance, except as modified herein.
4. No person other than individuals residing on the premises shall be engaged on the premises in the home occupation.
5. The days and hours of operation shall be limited to Tuesday and Thursday from 9:00 AM to 5:00 PM.
6. No more than one (1) customer at any one time shall be served within the applicant's home.
7. Retail sales on the premises shall be limited to incidental sales of shampoo and other hair care products.
8. No signs or other forms of on-premises advertisement or business identification visible from outside the home shall be permitted.
9. In accordance with the terms of the Zoning Ordinance, a minimum of two (2) off-street parking spaces shall be provided on the premises to accommodate customers. These spaces shall be in addition to the two (2) spaces that are otherwise required for the single-family residence.
10. In accordance with Section 24.1-115(b)(7) of the York County Zoning Ordinance, a certified copy of the resolution authorizing this special use permit shall be recorded at the expense of the applicant in the name of the property owner as grantor in the office of the Clerk of the Circuit Court.

Application No. UP-638-04, Mike Pickett: Request for a Special Use Permit, pursuant to Section 24.1-407(b) of the York County Zoning Ordinance, to authorize the establishment of a detached accessory apartment in conjunction with a single-family dwelling located at 209 Jara Lane. The applicant is proposing to construct the approximately 692-square-foot apartment on the second floor of an existing two-story detached garage. The 0.31-acre parcel is located on the east side of Jara Lane, approximately 350 feet south of its intersection with Hilda Hollow and is identified as Assessor's Parcel No. 37-112B-81. The property is zoned R13 (High density single-family residential) and is designated for High Density Residential development in the Comprehensive Plan.

Ms. Amy Parker, Senior Planner, presented a summary of the staff report dated May 28, 2004. She then referred to a letter from **Vonda J. Dunn, P.C.**, Attorney At Law representing The Greenlands Homeowners Association, addressed to Amy Parker and dated May 27, 2004. In the letter, Ms. Dunn objected to the application because, among other stated reasons, "it violates the established covenants running with the land as well as the rules and regulations of the community." She noted in the letter that no application for the proposed structure was presented to the homeowners' association (HOA) and, had it been, it would have been denied. [Letter attached to minutes of record.]

In conclusion, **Ms. Parker** noted the staff recommendation of approval as stated in the staff report. Ms. Parker requested a statement from the County Attorney regarding the County's position with regard to HOA covenants.

Mr. James A. Barnett, County Attorney, advised that zoning issues are separate from HOA covenants and County zoning actions do not affect the legal status of the covenants. Whether the Commission recommends approval or denial and whatever the Board determines, the HOA retains the right to enforce its covenants by whatever means are at its disposal.

Chair Simasek opened the public hearing.

Svein Lassen, Esq., 701 Town Center Drive, Newport News, VA, represented the applicant. He remarked that The Greenlands is an unusually successful planned development and typical lots in the development contain very nice houses on lots that are close together. However, he added, the property in question is not typical of the majority of the lots in The Greenlands because it comprises one-third acre of land at the end of a cul de sac and is one of the few lots in the development that could accommodate a detached garage as proposed. Mr. Lassen believed that because Mr. Pickett had built more houses in the development than any other builder had, he would do nothing to adversely affect the community. He said no architectural approval was sought or granted for the houses Mr. Pickett built. He added the plan does not propose that the accessory apartment be accessed through the main house. **Mr. Lassen** opined there can be different interpretations of the HOA covenant language and, in his opinion, the accessory apartment would not affect the rights of the HOA.

Mr. Mike Pickett, 209 Jara Lane, said that when he moved to The Greenlands he spoke with the appropriate County officials about requirements for building the proposed structure. He then applied for permits to build the structure, with plans to attach it to the main house by a breezeway. Mr. Pickett stated the purpose is to provide a home-school space for his children and foster children. He does not intend to ever rent out the space over the garage, he added, because it is intended specifically for use by his family.

Vonda Dunn, Esq., 240 Mustang Trail, Virginia Beach, VA, spoke as legal counsel for The Greenlands Homeowners Association. She said the applicant is a builder who is blatantly disregarding the covenants that run with the land. She cited Section 1 of the covenants and said the proposal is in direct conflict with that declaration. No other homes within The Greenlands are allowed living quarters within an accessory building, according to Ms. Dunn, and stated that she

advised her clients there is a legal path outside this process to alleviate conflicts within the community.

Mr. Tom Palmer, 100 Quincy Court, submitted a copy of the site plan of Mr. Pickett's property at 209 Jara Lane. He read aloud a message from his neighbor, **Mr. Guy Tyler**, 211 Jara Lane, dated May 27, 2004 in which Mr. Tyler requested denial of the application based on his concerns about possibly decreasing property values, its incongruity with the concept of single-family living, and it "circumvents the covenants of the Home Association." [A copy of the site plan and Mr. Tyler's comments are attached to the minutes of record.]

Mr. Palmer added that the site plan depicts a structure that appears to be two separate homes squeezed onto a single lot. He believed it was out of place with the single-family homes in the neighborhood. He said Mr. Pickett is subject to the same architectural controls as are all of the other homeowners in the The Greenlands.

Mr. Rob Anderson, 407 Blevins Run, serves on The Greenlands Board of Directors and as President of the HOA. Mr. Anderson recommended denial in accordance with the desires of the HOA and the homeowners of The Greenlands because it is out of character with the community and with the Board of Directors' desires and is contrary to the covenants. No other homes have detached garages and will not because the architectural review committee will not approve them. He noted that all homeowners are subject to the same architectural rules when making changes on their lots.

Mr. Steven Ryan, 104 Lance Way, a member of the Board of Directors of The Greenlands HOA, requested denial because the homeowners in the cul de sac do not want it and the applicant should be familiar with the procedures adopted by the HOA. He questioned if use of the addition for educating the children would bring into question the standards for educational facilities.

Mr. Alan Campbell, 303 Tristen Drive, spoke as a homeowner and member of the Board of Directors of The Greenlands HOA. He did not think the garage as proposed was a good fit between two large homes and is a jarring sight from the cul de sac. He added that Mr. Pickett made no application to the HOA to build the garage.

Mr. Svein Lassen noted that approval would not require a waiver of setbacks because the setbacks comply with zoning regulations. The issue, he said, is not about size or lot coverage but about a use permit for an accessory apartment that is not visible from the street, fits on the lot, is constructed of top-grade materials to match the primary dwelling, and would only finish off the garage. Mr. Lassen also noted staff proposed conditions of approval that will ensure property use of the property.

Seeing no others who wished to speak, **Chair Simasek** closed the public hearing.

Responding to a request, **Mr. Barnett** reiterated his earlier remarks about homeowner association covenants stating that whatever decision the County makes would have no impact on the covenants. By denying the use permit, the HOA issues would be settled. Granting it would not deprive the HOA of whatever action it might take and the applicant could not defend his case based on the County granting the application, nor would the Zoning Ordinance become the instrument by which the covenants are interpreted; the covenants stand on their own.

Mr. Ptasznik asked for the Zoning Ordinance definition of “accessory apartment.” **Mr. Carter** said the defining element of this particular application is the proposal to install a full bath in the space over the garage thereby converting it to a habitable space. He added that while it is structurally attached to the principal structure by the roof attachment, it is defined as a detached accessory apartment because the connection to the principal structure is not habitable space.

Mr. Ptasznik did not support approval because it does not meet the standards of an accessory apartment, namely providing space for relatives or overnight guests.

Mr. Barba noted that the County is not bound to the covenants of the HOA but the applicant, as a major builder, was aware of them; and it appears accessory apartments were never planned for this type of development.

Mr. Ptasznik moved adoption of Resolution PC04-15.

PC04-15

On motion of Mr. Ptasznik, the following resolution was defeated for lack of a majority:

A RESOLUTION TO RECOMMEND APPROVAL OF A SPECIAL USE PERMIT
TO AUTHORIZE A DETACHED ACCESSORY APARTMENT AT 209 JARA
LANE

Mr. Hamilton	Yes
Mr. Heavner	No
Mr. Barba	No
Mr. Harvell	Yes
Mr. Ptasznik	No
Mr. Simasek	Yes
Mr. Davis	Absent

OLD BUSINESS

There was no old business.

NEW BUSINESS

There was no new business.

STAFF REPORTS

Mr. Carter reported on recent actions by the Board of Supervisors.

Mr. Carter noted the kick-off the Comprehensive Plan review and that the Steering Committee should include four members of the Planning Commission, one of whom would serve as Chairman. Mr. Simasek noted that Messrs. Barba, Hamilton and Ptasznik volunteered to serve on this important committee.

Mr. Simasek announced the end of Mr. Rob Heavner's term on the Commission and told Mr. Heavner that he would be missed.

Mr. Heavner said he had appreciated the opportunity to work with past and present Commissioners and staff, and thanked them for their leadership and guidance.

COMMITTEE REPORTS

There were no Committee Reports.

COMMISSION REPORTS AND REQUESTS

There were no Commission Reports and Requests.

FUTURE BUSINESS

Mr. Carter advised the Commission of future business.

ADJOURN

Chair Simasek adjourned the meeting at 10:28 p.m.

SUBMITTED: _____/s/_____
Phyllis P. Liscum, Secretary

APPROVED: _____/s/_____
Andrew A. Simasek, Chair

DATE: July 14, 2004